IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10530 of 2002

For Approval and Signature:

Hon'ble MR.JUSTICE JAYANT PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

MOHANLAL SHIVLAL THAKORE

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 10530 of 2002

MR SHAKEEL A QURESHI for Petitioner No. 1

MR SM MEHTA, Ld. AGP for Respondent No. 1-3

CORAM : MR.JUSTICE JAYANT PATEL

Date of decision: 22/01/2003

ORAL JUDGEMENT

1. Rule. Mr.S.M.Mehta, learned AGP waives notice of Rule. The matter is taken up for final disposal.

2. The short facts of the case are that the petitioner was serving as constable in police force. On 20th September, 1992 a case was registered under Bombay Prohibition Act that while he was on duty he was found in drunken condition and not only that but it was also alleged that he has misbehaved with the Superior and there was indisciplined behaviour on the part of the petitioner. On 22-9-1992, the petitioner was placed under suspension. On 20th Oct., 1994, the charge-sheet was served and thereafter there was departmental inquiry. The departmental inquiry was held and it was found during the course of departmental inquiry that the allegations in the charge-sheet are proved and as a result thereof minor punishment was imposed upon the petitioner by the District Superintendent of Police as per the order dated 19-9-1996. The Special Inspector General of Police, Vadodara issued notice dated 19-3-1998 in exercise of the power under Section 27A of the Bombay Police Act, 1951, wherein it was mentioned that the acquittal order of the District Superintendent of Police dated 19-9-1996 is cancelled and since the charge-sheet is partly proved show-cause notice was issued to the petitioner to show cause as to why punishment of compulsory retirement should not be imposed upon the petitioner. The petitioner submitted his reply to the said show-cause notice. Thereafter, opportunity of hearing was given and it was found by the Special Inspector General of Police, as per the order dated 30-6-1998 to impose punishment of compulsory retirement upon the petitioner. The petitioner preferred appeal before the State Government against the order dated 30th June, 1998 passed by the Special Inspector General of Police and the said appeal ultimately, as per the decision dated 16th August, 1999, came to be dismissed. It is under these circumstances, the petitioner has approached this Court by preferring this petition.

3. Mr.Qureshi, learned Counsel for the petitioner raised mainly two contentions. Section 27A of the Bombay Police Act provides a mandatory procedure to be followed before exercise of the power under Section 27A and he submitted that even as per the proviso of Section 27A mandatory procedure of giving opportunity of hearing is required to be followed. He submitted that in the present case, the decision is already taken for cancellation of the order of the District Superintendent of Police dated 19-9-1996 and thereafter the notice is given to show cause as to why punishment of compulsory retirement should not be imposed and, therefore, Mr.Qureshi submitted that the action of imposing

punishment for compulsory retirement, which is on the basis of cancellation of the earlier order dated 19-9-1996 is illegal and without following mandatory procedure. Mr.Qureshi submitted that even otherwise also punishment of compulsory retirement in a matter where the police officer is found to have consumed alcohol and the charges of indisciplined behaviour cannot be such a grave charge, which would attract punishment of compulsory retirement. Mr.Qureshi contended that since the petitioner has already retired from service pursuant to the impugned order and since even the balance service period is also over, considering the facts and circumstances of the case, the Court may consider the question of substituting the penalty and may award consequential benefits to the petitioner. Mr.Qureshi has relied upon the judgement of the Apex Court in the case of "Sukhdeo v. Commissioner Amravati Division, Amravati & Another", reported in 1996(5) SCC, 103 to contend that when the decision is taken in exercise of power in public interest, the same cannot be on the basis of adverse remarks. Mr.Qureshi has also relied upon the judgement of this Court in the case of "Ishwarbhai Marghabhai Patel v. State of Gujarat", reported in 2000(3) GLH, 283 to contend that if the order is not passed in exercise of power in public interest or passed under the guise of public interest for premature retirement, Court can examine the legality and validity of the action. Mr.Qureshi submitted that so far as the prohibition case is concerned, the petitioner has been acquitted by the Criminal Court and, therefore, the said charge cannot be taken into consideration and even in the departmental inquiry proper evidence is not led for proving the said charge.

4. On behalf of the respondents, Mr.Mehta, learned AGP submitted that since after the show-cause notice, opportunity of hearing was given and the petitioner had also remained present during the course of hearing, it cannot be said that the order is passed without giving opportunity of hearing or without following the mandatory procedure. It has also been submitted that the charges proved in the departmental inquiry are serious and, therefore, the punishment of compulsory retirement is legal and valid.

5. The first contention of Mr.Qureshi regarding not following the mandatory procedure as required under Section 27A of the Act, prima facie, appears to be attractive. However, for close scrutiny of the same, it is necessary to consider the provisions of Section 27A of the Act, which reads as under:

"27.A Revisional powers of State Government Inspector General and Deputy Inspector General.= The State Government the Inspector General or a Deputy Inspector General may, suo motu or on an application made to him within the prescribed period in this behalf, call for & examine the record of any inquiry or proceeding of any subordinate police officer under this Chapter, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed by and as to the regularity of the proceeding of such officer and may, at any time, -

(a) confirm, modify or reverse any such order

(b) impose any penalty or set aside, reduce, confirm or enhance the penalty imposed by such order,

(c) direct that further inquiry may be held, or

(d) make such other order, as, in the circumstances of the case, it or he may deem fit:

Provided that an order in revision imposing or enhancing penalty shall not be passed unless the police officer affected thereby has been given a reasonable opportunity of being heard:

Provided further that no order in revision shall be passed -

(i) in a case where an appeal against the decision or order passed in such inquiry or proceeding has been filed, when such appeal is pending;

(ii) in a case where an appeal against such decision or order has not been filed, before the expiry of the period provided for filing such appeal; and

(iii) in a case after the expiry of a period of three years from the date of the decision or order sought to be revised."

On the true construction of the aforesaid provision, it appears that the order in revision in imposing or enhancing penalty shall not be passed unless the Police Officer effected thereby has been given a reasonable opportunity of being heard.

6. Mr.Qureshi made an attempt to pursue that since the language used in the show-cause notice is that the earlier order dated 19-9-1996 is cancelled and thereafter the notice is issued with predetermined mind, it can be said that the mandatory procedure is not followed. I am afraid such contention can be accepted because what is envisaged in Section 27A is that even if the order for enhance of enhanced punishment is to be passed, opportunity of hearing to the officer concerned is required to be given. The substance of the show-cause notice is apparent and the same is that the order of the lower authority is to be modified and the punishment is to be enhanced. The petitioner himself has also treated the said notice accordingly, because even after the receipt of the show-casue notice in the reply, copy whereof is produced at Annexure "L", no such contentions are raised. The principles of natural justice cannot be read in isolation, but the same has to be applied on the facts of each case. There cannot be any straight jacket formula for observance of principles of natural justice. In a given case, after the decision, if in the subsequent procedure there is a participation in the inquiry, it can be said that the person concerned has waived the complaint to breach of principles of natural justice and once having done so, it is not open to the party or the person concerned to agitate such question. In the present case, no even such contention has been raised by the petitioner before the authority, who imposed the punishment. Even otherwise also, the tenor of the show-cause notice is to give opportunity to the petitioner to show cause as to why the punishment should not be enhanced. On the question of imposing of enhanced punishment the petitioner has been given opportunity and after hearing, the order has been passed and, therefore, under these circumstances, I find that the contention of Mr.Qureshi of not following the mandatory procedure as required under the proviso of Section 27A deserves to be rejected.

7. The aforesaid takes me to examine the question of degree of the punishment or quantum of the punishment. Mr.Qureshi made an attempt to contend that there was no proper evidence during the course of inquiry, which would attract the punishment order on the basis of which it can be said that the charges are proved or even partly

proved. It is well settled that this Court while examining the legality and validity of the decision of the disciplinary authority in the departmental inquiry, would not exercise the power as that of the Appellate Court and what is required to be demonstrated is any serious breach of principles of natural justice during the course of the inquiry or any procedural lapse of mandatory provision. No such aspects are demonstrated and, therefore, on the question of evaluation of evidence, there can not be any reappreciation. Such exercise would normally not be undertaken by this Court under Article 226 of the Constitution of India.

8. The contention regarding imposing of minor penalty by substituting the punishment of compulsory retirement, in my view, is also ill-found. It is an admitted fact that the petitioner was a member of police force. There were allegations in the charge-sheet that he was found in drunken position on duty and indisciplined behaviour with the Superior by abusing to his Superior. Even if the argument is accepted for the sake of testing the contention that since the Criminal Court has acquitted the petitioner in prohibition case, the only charge left is of indisciplined behaviour, then also in my view, for a member of police force, discipline is of a paramount consideration. No member of police force is expected to behave with his superior in a manner, which results into indisciplined behaviour. In the present case, there is a further allegation that he had also abused his superior and this type of charge can be said to be serious misconduct, which would attract a major punishment. Even the departmental inquiry proceeded on that basis and, therefore, the petitioner was placed under suspension. During the course of departmental inquiry, the said charge is proved and, therefore, when the charges are proved in the departmental inquiry, it would not, in any manner, dilute the effect merely because the petitioner is acquitted in prohibition case. If the charges proved during the departmental inquiry are serious, which would attract major penalty, then the petitioner would not be justified in contending that since there is no sufficient evidence in the inquiry, the penalty should be substituted. It is well settled that unless the punishment is ex-facie disproportionate to the misconduct, the same would not be interfered normally by this Court exercising power under Article 226 of the Constitution of India. When disciplinary authority has taken decision of imposing punishment of compulsory retirement, I am of the view that considering the facts and circumstances of the case and that the petitioner was a member of police force

where discipline is of paramount consideration, it is not a case where punishment can be said to be ex-facie disproportionate and, therefore, no interference is called for on the question of quantum of punishment.

9. The reliance placed upon the judgement of the Apex Court, in my view, is ill-found in as much as the power is not exercised in public interest in the present case. So far as the decision of this Court reported in 2000(3) GLH, 283 (supra) is concerned, the same also would not be applicable to the present case, because in the present case, the charges are found to be proved in respect of major misconduct and if such is the situation and even when the Court has examined the legality and validity of the action of compulsory retirement and found that the punishment is not ex-facie, disproportionate and it would not be a case for substituting punishment, in my view, the reliance placed is of no help to the petitioner.

10. In view of the aforesaid discussion, the petition fails and hence the same is rejected. Rule discharged. No costs.

22-1-2003 (Jayant Patel, J.)

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